



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XC969**

**Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing – Acoustic Threshold Levels for Onset of Permanent and Temporary Threshold Shifts**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) seeks public comment to assist the Secretary of Commerce's review of NMFS' August 2016 *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresholds for Onset of Permanent and Temporary Threshold Shifts* (Technical Guidance), pursuant to section 10 of Presidential Executive Order (EO) 13795, Implementing an America-First Offshore Energy Strategy (April 28, 2017).

**DATES:** Comments must be received by *[insert date 45 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** The Technical Guidance is available in electronic form via the Internet at <http://www.nmfs.noaa.gov/pr/acoustics/>. You may submit comments by including NOAA-NMFS-2013-0177, by either of the following methods:

*Federal e-Rulemaking Portal:* Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0177](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0177), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments

*Mail:* Send comments to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Acoustic Guidance.

*Instructions:* NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will generally post for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Amy Scholik-Schlomer, Office of Protected Resources, 301-427-8449, [Amy.Scholik@noaa.gov](mailto:Amy.Scholik@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Presidential Executive Order (EO) 13795, Implementing an America-First Offshore Energy Strategy (82 FR 20815; April 28, 2017), states in section 2 that “It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is

safe and environmentally responsible.”

Among the requirements of EO 13795 is section 10, which calls for a review of NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing as follows: “The Secretary of Commerce shall review [NMFS’ Technical Guidance] for consistency with the policy set forth in Section 2 of this order and, after consultation with the appropriate Federal agencies, take all steps permitted by law to rescind or revise that guidance, if appropriate.”

The 2016 Technical Guidance referred to in EO 13795 is a technical document that compiles, interprets, and synthesizes scientific literature, to produce updated thresholds for assessing the effects of underwater sound on marine mammal hearing. The document provides updated received levels, or acoustic thresholds, above which individual marine mammals under NMFS’ jurisdiction are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater human-made sound sources. It is intended for use by NMFS analysts and managers and other relevant user groups and stakeholders, including other Federal agencies, when seeking to determine whether and how their activities are expected to result in hearing impacts to marine mammals via acoustic exposure. The Technical Guidance does not represent the entirety of an impact assessment but rather serves as one tool to help evaluate a proposed action. Mitigation and monitoring requirements in connection with any permits or authorizations issued by NMFS are management decisions made in the context of a proposed activity and a comprehensive effects analysis as well as legal requirements, and are beyond the direct scope of the Technical Guidance (*i.e.*, the

Technical Guidance may inform these decisions, but the Technical Guidance does not mandate any specific mitigation be required).

NMFS acknowledges the importance of supporting sustainable ocean use, such as energy exploration and production on the Outer Continental Shelf, provided activities are conducted in a safe and environmentally responsible manner. Our development and implementation of the Technical Guidance are consistent with allowing activities vital to our nation's security and economy to proceed, including those mentioned in EO 13795. As an example, during the development of the Technical Guidance, NMFS recognized that action proponents may have varying abilities to model and estimate exposure, and that the Technical Guidance may be more complex than some action proponents are able to incorporate. Accordingly, NMFS developed optional user tools in the form of an alternative methodology and associated user spreadsheet to assist action proponents with the application the more complex acoustic thresholds. Additionally, NMFS recognized that for some proposed actions, analyses may have already substantially progressed using the prior thresholds or other methods for assessing hearing effects, and it would be impractical to begin those analyses anew, taking into account timing constraints, expense, and other considerations. Hence, NMFS has been using a transitional approach for "pipeline" cases that considers various factors to determine the extent to which the Technical Guidance would be considered.

The Office of Management and Budget previously classified the Technical Guidance as a Highly Influential Scientific Assessment (HISA). As such, the document underwent three independent peer reviews, at three different stages its development,

including a follow-up to one of the peer reviews, prior to its dissemination by NMFS. Details of each peer review are included within the Technical Guidance (Appendix C), and specific peer reviewer comments and NMFS' responses are at <http://www.nmfs.noaa.gov/pr/acoustics/>. In addition to three independent peer reviews, there were three public comment periods. A previously published **Federal Register** Notice (81 FR 51694; August 4, 2016) provides substantive public comments and NMFS' responses.

NMFS is soliciting public comment and will also consult the appropriate Federal agencies to assist the Secretary of Commerce in reviewing the Technical Guidance for consistency with the policy in section 2 of EO 13795. The Technical Guidance will remain in use during this review, and this review will not delay the processing of any permits, applications, or consultations currently underway.

NMFS advises the public to focus comments on those relating to the purpose of the review of the Technical Guidance under section 10 of EO 13795, which is to ensure consistency with the policy in section 2 of the EO, cited above. For example, NMFS welcomes comments on two particular aspects of the Technical Guidance:

- 1) Peer-reviewed scientific literature: information regarding the availability of published new science relevant to marine mammal hearing or impacts of noise on hearing since the publication of the Technical Guidance and suggestions for how to consider new information within the Technical Guidance, and

- 2) Implementation support: recommendations regarding how NMFS can further aid in the application and implementation of the Technical Guidance (based on

difficulties encountered and/or ways NMFS can facilitate and/or improve implementation for action proponents).

Dated: May 24, 2017.

Donna S. Wieting

Director,

Office of Protected Resources,

National Marine Fisheries Service.

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